

# **DISTRICT OF COLUMBIA**

## ***OFFICIAL CODE***

**2001 EDITION**

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Volume 12

Title 22

Criminal Offenses and Penalties

to

Title 24

Prisoners and Their Treatment

**JUNE 2013 SUPPLEMENT**



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# PREFACE

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These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2013.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at [www.lexisnexis.com/advance](http://www.lexisnexis.com/advance), [www.lexisnexis.com/research](http://www.lexisnexis.com/research), and <http://dcclims1.dccouncil.us/lims>.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council Website at <http://www.dccouncil.us>.

Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

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# DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS.

## TITLE 22. CRIMINAL OFFENSES AND PENALTIES.

### SUBTITLE IV. PREVENTION, SOLUTION, AND PUNISHMENT OF CRIMES.

#### Chapter

#### 42A. Criminal Justice Coordinating Council.

### SUBTITLE VI. REGULATION AND POSSESSION OF WEAPONS.

#### 45. Weapons and Possession of Weapons.

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### SUBTITLE I. CRIMINAL OFFENSES.

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#### CHAPTER 33. TRESPASS; INJURIES TO PROPERTY.

### § 22-3302. Unlawful entry on property.

**Section references.** — This section is referenced in § 23-581.

#### CASE NOTES

##### ANALYSIS

Nature and elements of offense.

—Belief that entry is permitted, nature and elements of offense.

Searches and seizures.

Summary judgment.

##### Nature and elements of offense.

— **Belief that entry is permitted, nature and elements of offense.**

Police officers did not have probable cause to arrest occupants of house for committing District of Columbia offense of unlawful entry; some officers were aware that occupants had been expressly or impliedly invited onto property by a woman who, according to one occupant, was renting the house, and although someone an officer spoke with by phone said nobody had permission to be in the house, there was no indication that occupants knew or should have known they were entering against property owner's will, and although a neighbor

told officers the house was supposed to be vacant, it was not boarded up or secured in way that indicated owner wanted others to keep out. *Wesby v. District of Columbia*, 841 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 5680 (2012).

##### Searches and seizures.

Police officers investigating a rumor that a high school student had threatened to "shoot up" the school had reasonable basis for fearing that violence was imminent, entitling them to qualified immunity in action based on their warrantless entry into student's home; student's parents did not initially answer officers' knock at door or the telephone, when student's mother finally came to door, she did not inquire about the reason for officers' visit or express concern that they were investigating her son, and she then turned and ran back into the house when officers asked her if there were any guns inside. *Ryburn v. Huff*, 132 S. Ct. 987, 181 L. Ed. 2d 966, 2012 U.S. LEXIS 910 (2012), remanded by 676 F.3d 930, 2012 U.S. App. LEXIS 7920 (9th Cir. 2012).

**Summary judgment.**

Genuine issue of material fact as to whether police officers who participated in arrests for District of Columbia offense of unlawful entry that were not supported by probable cause were aware that a woman who was supposedly renting the house had given the arrestees permission to enter the house precluded summary

judgment on qualified immunity grounds on the arrestees' § 1983 claims of unlawful arrest, even if the officers were ordered by superior officers to make the arrests, or they relied on the probable cause determination of one or more of their fellow officers. *Wesby v. District of Columbia*, 841 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 5680 (2012).

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SUBTITLE III-A. DNA TESTING.

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CHAPTER 41A. DNA TESTING AND POST-CONVICTION RELIEF FOR INNOCENT PERSONS.

§ 22-4131. Definitions.

**Section references.** — This section is referenced in § 5-113.32 and § 22-4133.

**Emergency legislation.** — For temporary amendment of (2), see § 510 of the Omnibus

Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

§ 22-4135. Motion to vacate a conviction or grant a new trial on the ground of actual innocence.

**Section references.** — This section is referenced in § 16-802.

CASE NOTES

**Recantation.**

Even if victim's letter to trial court constituted a recantation and her recantation was credited, defendant, who had been convicted of assault with intent to commit first-degree sexual abuse (AWICSA), failed to show that a manifest injustice occurred, as necessary to warrant vacation of his sentence, or that he was actually innocent, as necessary to warrant relief under Innocence Protection Act (IPA); evidentiary value of victim's purported recantation was low, and would have, at best, been used to impeach her initial account of the

events that a rape or attempted rape had occurred, defendant did not dispute that he seriously assaulted victim with a knife, nor could he, given the extent of her wounds as reflected in the medical records, victim's initial account of what happened continued to carry weight, especially in light of its consistency with the other evidence, and a paramedic recalled that while victim was receiving treatment, she reported having been raped. *Meade v. United States*, 48 A.3d 761, 2012 D.C. App. LEXIS 322 (2012).

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## SUBTITLE IV. PREVENTION, SOLUTION, AND PUNISHMENT OF CRIMES.

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### CHAPTER 42A. CRIMINAL JUSTICE COORDINATING COUNCIL.

#### *Subchapter I. General Provisions*

Sec.

22-4235. Administrative support.

#### *Subchapter I. General Provisions.*

### § 22-4233. Membership.

**Section references.** — This section is referenced in § 24-1302.

**Emergency legislation.**

For temporary amendment of (a) and repeal

of (b), see § 106 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

### § 22-4235. Administrative support.

(a) There are authorized such funds as may be necessary to support the CJCC.

(b) The CJCC is authorized to hire staff and to obtain appropriate office space, equipment, materials, and services necessary to carry out its responsibilities.

(b-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the CJCC unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the CJCC[.] An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the CJCC for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The CJCC shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(c) The CJCC shall serve as the personnel authority for all employees of the CJCC. The CJCC shall exercise this authority consistent with Chapter 6 of Title 1.

(d) The CJCC may exercise procurement authority to carry out the responsibilities of the CJCC, including contracting and contract oversight. The CJCC shall exercise this authority consistent with Chapter 3A of Title 2 [§ 2-351.01 et seq.], except § 2-352.01(a) shall not apply.

(Oct. 3, 2001, D.C. Law 14-28, § 1506, 48 DCR 6981; Feb. 6, 2008, D.C. Law 17-108, § 211, 54 DCR 10993; Sept. 26, 2012, D.C. Law 19-171, § 214, 59 DCR 6190.)

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-171 substituted “consistent with Chapter 3A of Title 2; except that § 2-352.01(a) shall not apply” for “consistent with Unit A of Chapter 3 of Title 2, except with regard to the powers and duties outlined in § 2-301.05(a), (b), (c), and (e)” in (d).

**Legislative history of Law 19-171.** — Law 19-171, the “Technical Amendments Act of

2012,” was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

SUBTITLE VI. REGULATION AND POSSESSION OF WEAPONS.

CHAPTER 45. WEAPONS AND POSSESSION OF WEAPONS.

Sec.	Sec.
22-4501. Definitions.	sion of weapons during commis-
22-4502. Additional penalty for committing crime when armed.	sion of crime of violence; penalty.
22-4503. Unlawful possession of firearm.	22-4505. Exceptions.
22-4504. Carrying concealed weapons; posses-	22-4508. Transfers of firearms regulated.

§ 22-4501. Definitions.

For the purposes of this chapter, the term:

(1) “Crime of violence” shall have the same meaning as provided in § 23-1331(4).

(2) “Dangerous crime” means distribution of or possession with intent to distribute a controlled substance. For the purposes of this definition, the term “controlled substance” means any substance defined as such in the District of Columbia Official Code or any Act of Congress.

(2A) “Firearm” means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive. The term “firearm” shall not include:

(A) A destructive device as that term is defined in § 7-2501.01(7);

(B) A device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(C) A device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(3) “Knuckles” means an object, whether made of metal, wood, plastic, or other similarly durable material that is constructed of one piece, the outside part of which is designed to fit over and cover the fingers on a hand and the inside part of which is designed to be gripped by the fist.

(4) “Machine gun” shall have the same meaning as provided in § 7-2501.01(10).

(5) “Person” includes individual, firm, association, or corporation.

(6) “Pistol” shall have the same meaning as provided in § 7-2501.01(12).

(6A) “Place of business” shall have the same meaning as provided in § 7-2501.01(12A).

(7) “Playground” means any facility intended for recreation, open to the public, and with any portion of the facility that contains one or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(7A) “Registrant” means a person who has registered a firearm pursuant to Unit A of Chapter 25 of Title 7.

(8) “Sawed-off shotgun” shall have the same meaning as provided in § 7-2501.01(15).

(9) “Sell” and “purchase” and the various derivatives of such words shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

(9A) “Shotgun” shall have the same meaning as provided in § 7-2501.01(16).

(10) “Video arcade” means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(11) “Youth center” means any recreational facility or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(July 8, 1932, 47 Stat. 650, ch. 465, § 1; Dec. 27, 1967, 81 Stat. 736, Pub. L. 90-226, title V, § 501; Dec. 1, 1982, D.C. Law 4-164, § 601(e), 29 DCR 3976; July 28, 1989, D.C. Law 8-19, § 3(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(a), 37 DCR 24; Aug. 18, 1994, D.C. Law 10-150, § 3(a), 41 DCR 2594; Aug. 20, 1994, D.C. Law 10-151, § 109, 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(c), 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 4, 43 DCR 528; June 3, 1997, D.C. Law 11-275, § 8, 44 DCR 1408; June 8, 2001, D.C. Law 13-300, § 3, 47 DCR 7037; Oct. 17, 2002, D.C. Law 14-194, § 155, 49 DCR 5306; Apr. 24, 2007, D.C. Law 16-306, § 223(a), 53 DCR 8610; May 15, 2009, D.C. Law 17-390, § 3(a), 55 DCR 11030; May 20, 2009, D.C. Law 17-388, § 2(a), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(a), 59 DCR 5691.)

**Section references.** — This section is referenced in § 5-113.32, § 7-2508.01, § 16-2305.02, § 16-2333, § 16-4205, § 22-1804a, § 22-2104.01, § 22-4504, § 24-221.01b, § 24-403, § 24-403.01, § 24-408, and § 24-921.

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-170 redesignated former (2A)(1) through (2A)(3) as (2A)(A) through (2A)(C).

**Emergency legislation.**

For temporary amendment of (2A), see § 3(a) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

**Legislative history of Law 19-170.** — Law 19-170, the “Firearms Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-614. The Bill was adopted on first and

second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-366 and

transmitted to Congress for its review. D.C. Law 19-170 became effective on Sept. 26, 2012.

### CASE NOTES

#### Crimes of violence.

Offense of assault with significant bodily injury was not a crime of violence, and thus, defendant should not have been charged with assault with significant bodily injury while armed or with a related count of possessing a firearm during a crime of violence (PFCV),

which increased his potential term of imprisonment. *Colter v. United States*, 37 A.3d 282, 2012 D.C. App. LEXIS 63 (2012), writ of certiorari denied by 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8443, 81 U.S.L.W. 3229 (U.S. 2012).

## § 22-4502. Additional penalty for committing crime when armed.

(a) Any person who commits a crime of violence, or a dangerous crime in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles):

(1) May, if such person is convicted for the first time of having so committed a crime of violence, or a dangerous crime in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to, and including, 30 years for all offenses except first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, and first degree child sexual abuse while armed, and shall, if convicted of such offenses while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 5 years; and

(2) Shall, if such person is convicted more than once of having so committed a crime of violence, or a dangerous crime in the District of Columbia, or an offense in any other jurisdiction that would constitute a crime of violence or dangerous crime if committed in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than 5 years and, except for first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed and first degree child sexual abuse while armed, not more than 30 years, and shall, if convicted of such second offense while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 10 years.

(3) Shall, if such person is convicted of first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, or first degree child sexual abuse while armed, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than the minimum and mandatory minimum sentences required by subsections (a)(1), (a)(2), (c) and (e) of this section and § 22-2104, and not more than life imprisonment or life imprisonment without possibility of release as authorized

by § 24-403.01(b-2); § 22-2104; § 22-2104.01; and §§ 22-3002, 22-3008, and 22-3020.

(4) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offenses defined by this section are Class A felonies.

(b) Repealed.

(c) Any person sentenced pursuant to paragraph (1), (2), or (3) of subsection (a) above for a conviction of a crime of violence or a dangerous crime while armed with any pistol or firearm, shall serve a mandatory-minimum term of 5 years, if sentenced pursuant to paragraph (1) of subsection (a) of this section, or 10 years, if sentenced pursuant to paragraph (2) of subsection (a) of this section, and such person shall not be released, granted probation, or granted suspension of sentence, prior to serving such mandatory-minimum sentence.

(d) Repealed.

(e)(1) Subchapter I of Chapter 9 of Title 24 shall not apply with respect to any person sentenced under paragraph (2) of subsection (a) of this section or to any person convicted more than once of having committed a crime of violence or a dangerous crime in the District of Columbia sentenced under subsection (a)(3) of this section..

(2) The execution or imposition of any term of imprisonment imposed under paragraph (2) or (3) of subsection (a) of this section may not be suspended and probation may not be granted.

(f) Nothing contained in this section shall be construed as reducing any sentence otherwise imposed or authorized to be imposed.

(g) No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(July 8, 1932, 47 Stat. 560, ch. 465, § 2; Dec. 27, 1967, 81 Stat. 737, Pub. L. 90-226, title VI, § 605; July 29, 1970, 84 Stat. 600, Pub. L. 91-358, title II, § 205; Mar. 9, 1983, D.C. Law 4-166, §§ 3-7, 30 DCR 1082; Dec. 7, 1985, D.C. Law 6-69, § 9, 32 DCR 4587; July 28, 1989, D.C. Law 8-19, § 3(b), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(b), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(a), 41 DCR 1639; June 8, 2001, D.C. Law 13-302, § 6(a), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(b)(1), (2), 48 DCR 1873; Dec. 10, 2009, D.C. Law 18-88, § 219(a), 56 DCR 7413; Sept. 29, 2012, D.C. Law 19-170, § 3(b), 59 DCR 5691.)

**Section references.** — This section is referenced in § 4-751.01, § 5-113.32, § 22-4513, § 23-1322, § 24-221.06, § 24-403, § 24-403.01, and § 24-467.

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-170 added “or a dangerous crime” following “a crime of violence” in (c).

**Emergency legislation.**

For temporary (90 day) amendment of section, see § 3(b) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 3(b) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

For temporary amendment of (c), see § 3(b) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

**Legislative history of Law 19-170.** — See note to § 22-4501.

CASE NOTES

ANALYSIS

Purposes and legislative intent.

Sentence and punishment.

—Weight and sufficiency of evidence, sentence and punishment.

**Purposes and legislative intent.**

The primary purpose of statute authorizing imposition of enhanced sentence for a person who commits a crime of violence or a dangerous crime involving a firearm is to authorize imposition of an additional penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon; statute also serve the additional purposes of requiring more severe treatment of recidivists and those who wield firearms, as reflected in the required five-year mandatory-minimum sentences. *Clyburn v. United States*, 48 A.3d 147, 2012 D.C. App. LEXIS 312 (2012).

**Sentence and punishment.**

**— Weight and sufficiency of evidence, sentence and punishment.**

Evidence was insufficient to establish that assault rifle was “readily available” to defendant while he committed underlying offense of possession with intent to distribute (PWID), thus precluding imposition of enhanced sentence under statute governing crimes of violence or dangerous crimes involving firearms; the assault rifle was located in the bedroom beyond the living room where drug money was located and beyond the dining and hallway area, and no evidence was introduced specifying the distance between the living room and the bedroom, or the ease of the path from the living room to the bedroom and the assault rifle. *Clyburn v. United States*, 48 A.3d 147, 2012 D.C. App. LEXIS 312 (2012).

§ 22-4502.01. Gun free zones; enhanced penalty.

CASE NOTES

**Double jeopardy.**

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof fire-

arm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without license required proof that defendant carried weapon. *Washington v. U.S.*, 2012 WL 2050378 (2012).

§ 22-4503. Unlawful possession of firearm.

(a) No person shall own or keep a firearm, or have a firearm in his or her possession or under his or her control, within the District of Columbia, if the person:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is not licensed under § 22-4510 to sell weapons, and the person has been convicted of violating this chapter;

(3) Is a fugitive from justice;

(4) Is addicted to any controlled substance, as defined in § 48-901.02(4);

(5) Is subject to a court order that:

(A)(i) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or

(ii) Remained in effect after the person failed to appear for a hearing of which the person received actual notice;

(B) Restrains the person from assaulting, harassing, stalking, or threatening the petitioner or any other person named in the order; and

(C) Requires the person to relinquish possession of any firearms;

(6) Has been convicted within the past 5 years of an intrafamily offense,

as defined in D.C. Official Code § 16-1001(8), punishable as a misdemeanor, or any similar provision in the law of another jurisdiction.

(b)(1) A person who violates subsection (a)(1) of this section shall be sentenced to imprisonment for not more than 10 years and shall be sentenced to imprisonment for a mandatory-minimum term of 1 year, unless she or he has a prior conviction for a crime of violence other than conspiracy, in which case she or he shall be sentenced to imprisonment for not more than 15 years and shall be sentenced to a mandatory-minimum term of 3 years.

(2) A person sentenced to a mandatory-minimum term of imprisonment under paragraph (1) of this subsection shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence.

(c) A person who violates subsection (a)(2) through (a)(6) of this section shall be sentenced to not less than 2 years nor more than 10 years, fined not more than \$15,000, or both.

(d) For the purposes of this section, the term:

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4), or a crime under the laws of any other jurisdiction that involved conduct that would constitute a crime of violence if committed in the District of Columbia, or conduct that is substantially similar to that prosecuted as a crime of violence under the District of Columbia Official Code.

(2) "Fugitive from justice" means a person who has:

(A) Fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding; or

(B) Escaped from a federal, state, or local prison, jail, halfway house, or detention facility or from the custody of a law enforcement officer.

(July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, ch. 159, § 204(b); May 21, 1994, D.C. Law 10-119, § 15(b), 41 DCR 1639; Apr. 24, 2007, D.C. Law 16-306, § 223(c), 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 219(b), 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 13, 58 DCR 1174; Sept. 29, 2012, D.C. Law 19-170, § 3(c), 59 DCR 5691.)

**Section references.** — This section is referenced in § 7-2502.03, § 7-2507.06a, § 16-801, § 22-4507, § 22-4508, § 22-4510, § 23-1322, § 24-403, § 24-403.01, and § 24-906.

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-170, in (a)(6), added "within the past 5 years" and substituted "D.C. Official Code § 16-1001(8), punishable as a misdemeanor, or any similar provision in the law of" for "§ 16-1001, or a substantially similar offense in."

**Emergency legislation.**

For temporary (90 day) amendment of section, see § 3(c) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11,

For temporary amendment of (a)(6), see § 3(c) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

**Legislative history of Law 19-170.** — See note to § 22-4501.

**CASE NOTES**

**Double jeopardy.**

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime

required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without

license required proof that defendant carried weapon. *Washington v. U.S.*, 2012 WL 2050378 (2012).

**§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.**

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than \$5,000 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

(July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608; May 20, 2009, D.C. Law 17-388, § 2(c), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(d), 59 DCR 5691.)

**Section references.** — This section is referenced in § 7-2507.06a, § 22-2511, § 22-4505, § 22-4513, § 23-1322, § 24-221.06, § 24-261.02, and § 24-467.

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-170 deleted "without a license issued pursuant to District of Columbia law" following "a pistol" in the first sentence of the introductory language of (a) and in (a)(1).

**Emergency legislation.**

For temporary amendment of (a), see § 3(d) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

**Legislative history of Law 19-170.** — See note to § 22-4501.

## CASE NOTES

## ANALYSIS

**Arrest.**

Harmless or reversible error.

—Instructions, harmless or reversible error.

Nature and elements of offenses.

—Crimes of violence, nature and elements of offenses.

Sentence and punishment.

Weight and sufficiency of evidence.

—Operability of weapon, weight and sufficiency of evidence.

**Arrest.**

Defendant preserved for appellate review assertion that trial court erroneously precluded him from cross-examining the arresting officer during defendant's suppression hearing in weapons prosecution about a civil suit for false arrest pending against the officer without first hearing a proffer from defendant on the relevance of the proposed cross-examination, where defendant sought trial court's permission to proffer the relevance of the proposed cross-examination once and, although the trial court prefaced its ruling excluding inquiry into the civil suit with the phrase, "Not right now," the trial court made it clear throughout the hearing that it would not entertain questioning about facts that it considered outside the scope of the issue of consent, even if they related to officer's credibility. *Dawkins v. United States*, 41 A.3d 1265, 2012 D.C. App. LEXIS 151 (2012).

**Harmless or reversible error.****— Instructions, harmless or reversible error.**

Erroneous failure to give a unanimity instruction as to which weapon, if any, was possessed by defendant did not affect his substantial rights or seriously affect fairness of trial on charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, as necessary to warrant reversal on plain-error review; trial court gave general unanimity instruction, and, while there were three possible factual scenarios involving different times, potentially different weapons, and different locations, ample evidence supported the most likely basis of conviction, i.e., that defendant carried pistol found in his girlfriend's car. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Trial court should have given a special unanimity instruction regarding which weapon, if any, was possessed by defendant with respect to charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, as jury could have found defendant

guilty based upon three factual scenarios, each of which involved possession of potentially different weapons, at different times, and in different locations. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Trial court's failure to give jury a special unanimity instruction with regard to which firearm, if any, was carried by defendant would be reviewed only for plain error, on appeal of conviction for carrying a pistol without a license (CPWL), where defendant did not request a special unanimity instruction. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

**Nature and elements of offenses.****— Crimes of violence, nature and elements of offenses.**

Offense of assault with significant bodily injury was not a crime of violence, and thus, defendant should not have been charged with assault with significant bodily injury while armed or with a related count of possessing a firearm during a crime of violence (PFCV), which increased his potential term of imprisonment. *Colter v. United States*, 37 A.3d 282, 2012 D.C. App. LEXIS 63 (2012), writ of certiorari denied by 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8443, 81 U.S.L.W. 3229 (U.S. 2012).

**Sentence and punishment.**

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without license required proof that defendant carried weapon. *Washington v. U.S.*, 2012 WL 2050378 (2012).

**Weight and sufficiency of evidence.****— Operability of weapon, weight and sufficiency of evidence.**

Evidence supported a finding, on charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, that handgun at issue was operable; although a bullet was stuck in barrel when one officer recovered handgun, officer officers merely pushed it out, and the weapon was successfully test-fired thereafter. *Wynn v. United States*, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

§ 22-4505. **Exceptions.**

(a) The provisions of §§ 22-4504(a) and 22-4504(a-1) shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, including special agents of the Office of Tax and Revenue, authorized in writing by the Deputy Chief Financial Officer for the Office of Tax and Revenue to carry a firearm while engaged in the performance of their official duties, and criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties;

(2) Special police officers and campus police officers who carry a firearm in accordance with D.C. Official Code § 5-129.02, and rules promulgated pursuant to that section;

(3) Members of the Army, Navy, Air Force, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States; provided, that such members are at or are going to or from their places of assembly or target practice;

(4) Officers or employees of the United States duly authorized to carry a concealed pistol;

(5) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his or her possession, using, or carrying a pistol in the usual or ordinary course of such business; and

(6) Any person while carrying a pistol, transported in accordance with § 22-4504.02, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business or in moving goods from one place of abode or business to another, or to or from any lawful recreational firearm-related activity.

(b) The provisions of § 22-4504(a) with respect to pistols shall not apply to a police officer who has retired from the Metropolitan Police Department, if the police officer has registered a pistol and it is concealed on or about the police officer.

(c) For the purposes of subsection (a)(6) of this section, the term “recreational firearm-related activity” includes a firearms training and safety class.

(July 8, 1932, 47 Stat. 651, ch. 465, § 5; May 7, 1993, D.C. Law 9-266, § 3, 39 DCR 5676; May 21, 1994, D.C. Law 10-119, § 15(d), 41 DCR 1639; Mar. 26, 1999, D.C. Law 12-190, § 3, 45 DCR 7814; June 9, 2001, D.C. Law 13-305, § 408, 48 DCR 334; June 12, 2003, D.C. Law 14-310, § 9, 50 DCR 1092; May 20, 2009, D.C. Law 17-388, § 2(e), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(e), 59 DCR 5691.)

**Section references.** — This section is referenced in § 6-223.

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-170 deleted “to § 22-4504” at the end of the section heading; rewrote (a); substituted “§ 22-

4504(a)” for “§ 22-4504” in (b); added (c); and made related changes.

**Emergency legislation.**

For temporary amendment of section, see § 3(e) of the Firearms Second Congressional Review Emergency Amendment Act of 2012

(D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

**Legislative history of Law 19-170.** — See note to § 22-4501.

## § 22-4508. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a firearm to the purchaser thereof until 10 days shall have elapsed from the date of the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law enforcement officers, and, when delivered, said firearm shall be transported in accordance with § 22-4504.02. At the time of purchase, the purchaser shall sign in duplicate and deliver to the seller a statement containing his or her full name, address, occupation, date and place of birth, the date of purchase, the caliber, make, model, and manufacturer's number of the firearm and a statement that the purchaser is not forbidden by § 22-4503 to possess a firearm. The seller shall, within 6 hours after purchase, sign and attach his or her address and deliver one copy to such person or persons as the Chief of Police of the District of Columbia may designate, and shall retain the other copy for 6 years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-4514 as entitled to possess the same, and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers.

(July 8, 1932, 47 Stat. 652, ch. 465, § 8; June 29, 1953, 67 Stat. 94, ch. 159, § 204(e); May 21, 1994, D.C. Law 10-119, § 15(g), 41 DCR 1639; May 20, 2009, D.C. Law 17-388, § 2(g), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(f), 59 DCR 5691.)

### Effect of amendments.

The 2012 amendment by D.C. Law 19-170 in the first sentence, substituted "date of the" for "time of the application for the"; in the second sentence, substituted "time of purchase" for "time of applying for the purchase of a firearm," substituted "date and" for "color," substituted "date of purchase" for "date and hour of application," deleted "to be purchased" following "of the firearm,"; and substituted "purchase" for "such application" in the third sentence.

### Emergency legislation.

For temporary (90 day) amendment of section, see § 3(f) of Firearms Emergency Amend-

ment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 3(f) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

For temporary amendment of section, see § 3(f) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

**Legislative history of Law 19-170.** — See note to § 22-4501.



# TITLE 23. CRIMINAL PROCEDURE.

## Chapter

### 13. Bail Agency [Pretrial Services Agency] and Pretrial Detention.

#### CHAPTER 1. GENERAL PROVISIONS.

### § 23-101. Conduct of prosecutions.

#### LAW REVIEWS AND JOURNAL COMMENTARIES

District of Columbia Criminal Procedure Survey. 34 Cath.U.L.Rev. 1293, (1985).

"The District of Columbia Revitalization Act

and Criminal Justice: The Federal Government's Assault on Local Authority." 4 The District of Columbia Law Review 77 (1998).

### § 23-105. Challenges to jurors.

#### LAW REVIEWS AND JOURNAL COMMENTARIES

Trial Court Discretion in Conducting the Voir Dire Subjected to More Stringent Scrutiny:

Cordero v. United States. 33 Cath.U.L.Rev. 1121, (1984).

### § 23-110. Remedies on motion attacking sentence.

**Section references.** — This section is referenced in § 11-2601, § 22-4132, and § 22-4133.

#### CASE NOTES

##### ANALYSIS

Counsel for accused.

—Adequacy of representation by counsel for accused.

—Post-trial motions, counsel for accused.

Evidence.

—Newly discovered evidence.

Habeas corpus.

—Federal jurisdiction, habeas corpus.

Sentencing and punishment.

##### Counsel for accused.

##### —Adequacy of representation by counsel for accused.

Defendant was not denied effective assistance of counsel due to appellate counsel's purported failure to argue on direct appeal that trial counsel failed to effectively litigate his motion to suppress evidence, based in large part on alleged suggestive identification of him at crime scene, where trial counsel preserved suppression issues for appeal and appellate counsel advanced them on appeal, and appellate court rejected defendant's claims on merits. *Graham v. Bledsoe*, 841 F.Supp.2d 134,

2012 U.S. Dist. LEXIS 9379 (2012), appeal dismissed by 2012 U.S. App. LEXIS 21830 (D.C. Cir. Oct. 18, 2012).

##### —Post-trial motions, counsel for accused.

Murder defendant was not entitled to evidentiary hearing on claim raised in his motion for post-conviction relief that his trial counsel had rendered ineffective assistance by failing to file a notice of appeal as he had requested her to do, notwithstanding government's concession that defendant was entitled to such a hearing, as it was undisputed that, as part of his written plea agreement with the prosecution, he waived his right to appeal anything other than the legality of sentence imposed on him, sentence imposed on defendant was not in excess of punishment authorized by statute and defendant had not claimed to the contrary, defendant did not raise ineffective assistance claim until almost 13 years after he was sentenced, and even if defendant's allegation was true, counsel's affidavit, stating that if defendant had directed her to file a notice of appeal, she would have advised him that he had given up right to appeal except from imposition of an illegal sentence, ex-

plained what her only plausible response to such a direction would have been. *Stewart v. United States*, 37 A.3d 870, 2012 D.C. App. LEXIS 7 (2012).

**Evidence.**

**— Newly discovered evidence.**

Even if victim's letter to trial court constituted a recantation and her recantation was credited, defendant, who had been convicted of assault with intent to commit first-degree sexual abuse (AWICSA), failed to show that a manifest injustice occurred, as necessary to warrant vacation of his sentence, or that he was actually innocent, as necessary to warrant relief under Innocence Protection Act (IPA); evidentiary value of victim's purported recantation was low, and would have, at best, been used to impeach her initial account of the events that a rape or attempted rape had occurred, defendant did not dispute that he seriously assaulted victim with a knife, nor could he, given the extent of her wounds as reflected in the medical records, victim's initial account of what happened continued to carry weight, especially in light of its consistency with the other evidence, and a paramedic recalled that while victim was receiving treatment, she reported having been raped. *Meade v. United States*, 48 A.3d 761, 2012 D.C. App. LEXIS 322 (2012).

**Habeas corpus.**

**— Federal jurisdiction, habeas corpus.**

Because District of Columbia Code provision governing remedies on motion attacking sentence does not provide a remedy for claims of ineffective assistance of appellate counsel, a federal district court may review a federal habeas petition asserting ineffective assistance of appellate counsel after the petitioner has moved to recall the mandate in the District of Columbia Court of Appeals. *Sanders v. Caraway*, 2012 WL 1632862 (2012).

**Sentencing and punishment.**

Appellate counsel's failure to "reargue" the sufficiency of the evidence supporting defendant's upheld convictions and to challenge the imposition of consecutive sentences for armed robbery and armed burglary was not objectively unreasonable, as required to support defendant's ineffective assistance claim, after the District of Columbia Court of Appeals remanded defendant's case for the limited purpose of correcting the improperly imposed enhancements to his sentence; such arguments would have been outside the scope of the remand, and under the mandate rule, the inferior court had no power or authority to deviate from the mandate issued by the appellate court. *Sanders v. Caraway*, 2012 WL 1632862 (2012).

**LAW REVIEWS AND JOURNAL COMMENTARIES**

Habeas Relief For State Prisoners, 87 Georgetown Law Journal 1842.

**§ 23-113. Limitations on actions for criminal violations.**

**Section references.** — This section is referenced in § 5-113.31 and § 22-3227.07.

**CASE NOTES**

**Welfare fraud.**

Extension of statute of limitations for sexual abuse effected by Felony Sexual Assault Act, as applied to prosecution of defendant for his first offense, did not violate the Ex Post Facto Clause; prior to expiration of six-year period set forth in former statute of limitations, statute was amended to increase limitations period to

15 years, statute of limitations for defendant's sexual abuse charge was extended before it had expired, and extension of limitations period neither aggravated a crime nor made it greater than it was, since defendant was never free from prosecution. *Thomas v. U.S.*, 2012 WL 1207422 (2012).

## CHAPTER 5. WARRANTS AND ARRESTS.

*Subchapter II. Search Warrants.***§ 23-521. Nature and issuance of search warrants.**

**Section references.** — This section is referenced in § 1-301.89a, § 23-522, § 23-523, and § 23-524.

## CASE NOTES

**Time of execution.**

Reasonable police officer could have believed that executing nighttime search without knocking did not violate Fourth Amendment, and thus officers who did execute such warrant were entitled to qualified immunity in arrestees' § 1983 action, where there was probable cause to believe that person who was suspected of committing murder lived at residence being searched, officer had some reason to think that such person would be in possession of weapon listed in warrant, and officer had reasonable grounds to believe that such person was easily provoked to violence and that, once provoked, would not be inclined to back down. *Youngbey v. March*, 676 F.3d 1114, 2012 U.S. App. LEXIS 7630 (C.A.D.C. 2012).

Issue of whether police officers were entitled to qualified immunity in civil rights action under Fourth Amendment for planning and conducting 4:00 a.m. search on warrant that did not authorize nighttime search and breaking and entering into plaintiffs' home without knocking and announcing their presence turned on question of law, and thus Court of Appeals had jurisdiction to conduct de novo review of trial court's denial of qualified immunity as "final decision," since officers did not contest that they did not knock and announce before entering into plaintiffs' home and there was no dispute that officers executed search warrant during nighttime. *Youngbey v. March*, 676 F.3d 1114, 2012 U.S. App. LEXIS 7630 (C.A.D.C. 2012).

*Subchapter V. Arrest Without Warrant.***§ 23-581. Arrests without warrant by law enforcement officers.**

**Section references.** — This section is referenced in § 23-524 and § 23-582.

**Emergency legislation.**

For temporary amendment of (a-7) and addi-

tion of (a-8) and (a-9), see § 202 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

## CASE NOTES

**Seizure incident to arrest.**

Searches which were conducted by county jails as standard part of intake process, and which were invasive but did not include any touching of unclothed areas by inspecting officer, struck reasonable balance between inmate privacy and needs of the institutions; Fourth

and Fourteenth Amendments did not require that some detainees be exempt from such procedures absent reasonable suspicion of concealed weapon or other contraband. *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 S.Ct. 1510, 2012 U.S. LEXIS 2712 (2012).

CHAPTER 13. BAIL AGENCY [PRETRIAL SERVICES AGENCY]  
AND PRETRIAL DETENTION.

*Subchapter II. Release and Pretrial  
Detention*

Sec.  
23-1331. Definitions.

Sec.  
23-1322. Detention prior to trial.

*Subchapter II. Release and Pretrial Detention.*

§ 23-1321. Release prior to trial.

**Section references.** — This section is referenced in § 23-1322, § 23-1323, § 23-1324, § 23-1325, § 23-1326, § 23-1328, and § 23-1329.

LAW REVIEWS AND JOURNAL COMMENTARIES

Quid Pro Quo: Stay Drug-Free and Stay on Release. James K. Stewart, 57  
Geo.Wash.L.Rev. 68 (1988).

§ 23-1322. Detention prior to trial.

(a) The judicial officer shall order the detention of a person charged with an offense for a period of not more than 5 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the government to notify the appropriate court, probation or parole official, or local or state law enforcement official, if the judicial officer determines that the person charged with an offense:

(1) Was at the time the offense was committed, on:

(A) Release pending trial for a felony or misdemeanor under local, state, or federal law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under local, state, or federal law; or

(C) Probation, parole or supervised release for an offense under local, state, or federal law; and

(2) May flee or pose a danger to any other person or the community or, when a hearing under § 23-1329(b) is requested, is likely to violate a condition of release. If the official fails or declines to take the person into custody during the 5-day period described in this subsection, the person shall be treated in accordance with other provisions of law governing release pending trial.

(b)(1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § 23-1321(c) will reasonably assure the appearance of the person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

(A) A crime of violence, or a dangerous crime, as these terms are defined in § 23-1331;

(B) An offense under section 502 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-722);

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(D) A serious risk that the person will flee.

(2) If, after a hearing pursuant to the provision of subsection (d) of this section, the judicial officer finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer shall order that the person be detained before trial.

(c) There shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community if the judicial officer finds by probable cause that the person:

(1) Committed a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, while armed with or having readily available a pistol, firearm, imitation firearm, or other deadly or dangerous weapon;

(2) Has threatened, injured, intimidated, or attempted to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding;

(3) Committed a dangerous crime or a crime of violence, as these terms are defined in § 23-1331, and has previously been convicted of a dangerous crime or a crime of violence which was committed while on release pending trial for a local, state, or federal offense;

(4) Committed a dangerous crime or a crime of violence while on release pending trial for a local, state, or federal offense;

(5) Committed 2 or more dangerous crimes or crimes of violence in separate incidents that are joined in the case before the judicial officer;

(6) Committed a robbery in which the victim sustained a physical injury;

(7) Violated § 22-4504(a) (carrying a pistol without a license), § 22-4504(a-1) (carrying a rifle or shotgun), § 22-4504(b) (possession of a firearm during the commission of a crime of violence or dangerous crime), § 22-4503 (unlawful possession of a firearm) or [§ 22-2511] (presence in a motor vehicle containing a firearm); or

(8) Violated [subchapter VIII of Chapter 25 of Title 7, § 7-2508.01 et seq.], while on probation, parole, or supervised release for committing a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, and while armed with or having readily available a firearm, imitation firearm, or other deadly or dangerous weapon as described in § 22-4502(a).

(d)(1) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on

motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or *sua sponte*, may order that, while in custody, a person who appears to be an addict receive a medical examination to determine whether the person is an addict, as defined in § 23-1331.

(2) At the hearing, the person has the right to be represented by counsel and, if financially unable to obtain adequate representation, to have counsel appointed.

(3) The person shall be afforded an opportunity to testify. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings under §§ 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purpose of impeachment in any subsequent proceedings.

(4) The person shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.

(5) The person shall be detained pending completion of the hearing.

(6) The hearing may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required or the safety of any other person or the community.

(7) When a person has been released pursuant to this section and it subsequently appears that the person may be subject to pretrial detention, the attorney for the government may initiate a pretrial detention hearing by ex parte written motion. Upon such motion, the judicial officer may issue a warrant for the arrest of the person and if the person is outside the District of Columbia, the person shall be brought before a judicial officer in the district where the person is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

(e) The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account information available concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or dangerous crime as these terms are defined in § 23-1331, or involves obstruction of justice as defined in § 22-722;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person, including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(f) In a release order issued under § 23-1321(b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of:

(A) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest; and

(C) The provisions of § 22-722, relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

(g) In a detention order issued under subsection (b) of this section, the judicial officer shall:

(1) Include written findings of fact and a written statement of the reasons for the detention;

(2) Direct that the person be committed to the custody of the Attorney General of the United States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) Direct that, on order of a judicial officer or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to the United States Marshal or other appropriate person for the purpose of an appearance in connection with a court proceeding.

(h)(1) The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the time within which the person shall be indicted or shall have the trial of the case commence may be extended for one or more additional periods not to exceed 20 days each on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period or periods of detention may be granted only on the basis of good cause shown, including due diligence and materiality, and shall be granted only for the additional time required to prepare for the expedited indictment and trial of the person. Good cause may include, but is not limited to, the unavailability of an essential witness, the necessity for forensic analysis of

evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, complex or difficult legal issues, scheduling conflicts which arise shortly before the scheduled trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, an agreement between the government and the defense to dispose of the case by a guilty plea on or after the scheduled trial date, or the breakdown of a plea on or immediately before the trial date, and allowing reasonable time to prepare for an expedited trial after the circumstance giving rise to a tolling or extension of the 100-day period no longer exists. If the time within which the person must be indicted or the trial must commence is tolled or extended, an indictment must be returned at least 10 days before the new trial date.

(2) For the purposes of determining the maximum period of detention under this section, the period shall begin on the latest of:

(A) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia after arrest;

(B) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia following a re-arrest or order of detention after having been conditionally released under § 23-1321 or after having escaped;

(C) The date on which the trial of a defendant detained under subsection (b) of this section ends in a mistrial;

(D) The date on which an order permitting the withdrawal of a guilty plea becomes final;

(E) The date on which the defendant reasserts his right to an expedited trial following a waiver of that right;

(F) The date on which the defendant, having previously been found incompetent to stand trial, is found competent to stand trial;

(G) The date on which an order granting a motion for a new trial becomes final; or

(H) The date on which the mandate is filed in the Superior Court after a case is reversed on appeal.

(3) After 100 days, as computed under paragraphs (2) and (4) of this section, or such period or periods of detention as extended under paragraph (1) of this section, the defendant shall be treated in accordance with § 23-1321(a) unless the trial is in progress, has been delayed by the timely filing of motions, excluding motions for continuance, or has been delayed at the request of the defendant.

(4) In computing the 100 days, the following periods shall be excluded:

(A) Any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

(B) Any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental competency or physical capacity to stand trial;

(C) Any period attributable to the inability of the defendant to participate in his or her defense because of mental incompetency or physical incapacity; and

(D) Any period in which the defendant is otherwise unavailable for trial.

(i) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(July 29, 1970, 84 Stat. 644, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, § 3, 29 DCR 3479; July 28, 1989, D.C. Law 8-19, § 2(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(a), 37 DCR 24; July 3, 1992, D.C. Law 9-125, § 3, 39 DCR 2134; Aug. 20, 1994, D.C. Law 10-151, § 602(a), 41 DCR 2608; May 16, 1995, D.C. Law 10-255, § 17, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 6, 42 DCR 1547; June 3, 1997, D.C. Law 11-273, § 3(b), 43 DCR 6168; June 3, 1997, D.C. Law 11-275, § 14(f), 44 DCR 1408; June 12, 2001, D.C. Law 13-310, § 2(b), 48 DCR 1648; May 17, 2002, D.C. Law 14-134, § 7, 49 DCR 408; May 5, 2007, D.C. Law 16-308, § 3(a), 54 DCR 942; Dec. 10, 2009, D.C. Law 18-88, § 223, 56 DCR 7413; Sept. 26, 2012, D.C. Law 19-171, § 78, 59 DCR 6190.)

**Section references.** — This section is referenced in § 23-1321, § 23-1323, § 23-1324, and § 23-1329.

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-171 made a technical correction to D.C. Law 18-88 which did not affect this section as codified.

**Emergency legislation.**

For temporary amendment of (c)(7), see § 107(c) of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012

(D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

**Legislative history of Law 19-171.** — Law 19-171, the “Technical Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

## LAW REVIEWS AND JOURNAL COMMENTARIES

Constitutional Rights, Due Process, And The Dissenting Voice, 40 Howard Law Journal 399.

Preventive Detention And United States v. Edwards: Burdening The Innocent, 32 American University Law Review, The 191.

Preventive Detention, A Species of Lydford Law. Sam J. Ervin, Jr., 52 Geo.Wash.L.Rev. 113 (1983).

“The unnecessary detention of children in the District of Columbia—Juvenile detention law in the District of Columbia: A practitioner’s guide.” 3 The District of Columbia Law Review 281 (1995).

## § 23-1327. Penalties for failure to appear.

**Section references.** — This section is referenced in § 16-801, § 23-1303, and § 23-1322.

## CASE NOTES

### ANALYSIS

#### Intent.

— Wilfulness, intent.

#### Intent.

— Wilfulness, intent.

Evidence was sufficient to show that defen-

dant had not been released by a judicial officer after his case was called and passed over, and thus acted willfully, as required to support conviction for violating Bail Reform Act, by failing to be present in courtroom later same day when his case was called again; although computer codes entered by courtroom clerks indi-

cated that usual courtroom procedures had not been followed for recording defendant's initial appearance and failure to remain in courtroom, defendant's failure to appear was by itself prima facie evidence of willful action, police officer testified that defendant had left courtroom because he wanted to find witnesses, and

jury could infer, from the fact that the case was recalled the same day, that defendant knew he had not been released and the case would be recalled later in the day. *Gilliam v. United States*, 46 A.3d 360, 2012 D.C. App. LEXIS 305 (2012).

## § 23-1331. Definitions.

As used in this subchapter:

(1) The term “judicial officer” means, unless otherwise indicated, any person or court in the District of Columbia authorized pursuant to section 3041 of Title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court.

(2) The term “offense” means any criminal offense committed in the District of Columbia, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress.

(3) The term “dangerous crime” means:

(A) Any felony offense under Chapter 45 of Title 22 (Weapons) or Unit A of Chapter 25 of Title 7 (Firearms Control);

(B) Any felony offense under Chapter 27 of Title 22 (Prostitution, Pandering);

(C) Any felony offense under Unit A of Chapter 9 of Title 48 (Controlled Substances);

(D) Arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business;

(E) Burglary or attempted burglary;

(F) Cruelty to children;

(G) Robbery or attempted robbery;

(H) Sexual abuse in the first degree, or assault with intent to commit first degree sexual abuse; or

(I) Any felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [D.C. Law 18-239; § 22-1831 et seq.] or any conspiracy to commit such an offense.

(4) The term “crime of violence” means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt or conspiracy to commit any of the foregoing offenses.

(5) The term “addict” means any individual who habitually uses any narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 so as to endanger the public morals, health, safety, or welfare.

(6) The term “physical injury” means bodily harm greater than transient pain or minor temporary marks.

(July 29, 1970, 84 Stat. 650, Pub. L. 91-358, title II, § 210(a); July 28, 1989, D.C. Law 8-19, § 2(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(c), 37 DCR 24; May 8, 1993, D.C. Law 9-270, § 3, 39 DCR 9223; Oct. 2, 1993, D.C. Law 10-26, § 3, 40 DCR 3416; Aug. 20, 1994, D.C. Law 10-151, § 101(e), 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(f), 42 DCR 53; June 3, 1997, D.C. Law 11-273, § 3(a), 43 DCR 6168; June 12, 2001, D.C. Law 13-310, § 2(e), 48 DCR 1648; Oct. 17, 2002, D.C. Law 14-194, § 156(b), 49 DCR 5306; Apr. 24, 2007, D.C. Law 16-306, § 224(c), 53 DCR 8610; May 5, 2007, D.C. Law 16-308, § 3(b), 54 DCR 942; Oct. 23, 2010, D.C. Law 18-239, § 206(b), 57 DCR 5405; Sept. 29, 2012, D.C. Law 19-170, § 4, 59 DCR 5691.)

**Section references.** — This section is referenced in § 5-116.01, § 5-132.21, § 7-1301.03, § 7-2501.01, § 16-2310, § 16-2310.01, § 16-2331, § 16-2332, § 16-2333, § 16-4205, § 22-951, § 22-1803, § 22-1805a, § 22-2107, § 22-3215, § 22-3611, § 22-4131, § 22-4501, § 22-4503, § 23-1322, § 23-1323, § 23-1329, § 24-211.07, § 24-403.01, § 24-531.05, § 24-531.08, § 24-531.09, and § 48-1002.

**Effect of amendments.**

The 2012 amendment by D.C. Law rewrote (3)(A).

The 2012 amendment by D.C. Law rewrote (3)(A).

**Emergency legislation.**

For temporary (90 day) amendment of section, see § 4 of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012,

For temporary amendment of (3)(A), see § 4 of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

For temporary amendment of section, see § 107(a) of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

**Legislative history of Law 19-170.** — Law 19-170, the “Firearms Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-614. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-366 and transmitted to Congress for its review. D.C. Law 19-170 became effective on Sept. 26, 2012.

**Legislative history of Law 19-170.** — Law 19-170, the “Firearms Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-614. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-366 and transmitted to Congress for its review. D.C. Law 19-170 became effective on Sept. 26, 2012.

## CHAPTER 19. CRIME VICTIMS' RIGHTS.

### § 23-1905. Definitions.

**Emergency legislation.** — For temporary amendment of (2)(A)(i), see § 107(b) of the Omnibus Criminal Code Amendments Emer-

gency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).



# TITLE 24. PRISONERS AND THEIR TREATMENT.

## Chapter

1. Transfer of Prison System to Federal Authority.
2. Prisons and Prisoners.
- 5A. Evaluation and Treatment of Incompetent Defendants.

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## CHAPTER 1. TRANSFER OF PRISON SYSTEM TO FEDERAL AUTHORITY.

### *Subchapter I. Corrections*

Sec.

24-101a. District of Columbia Corrections Information Council.

### *Subchapter I. Corrections.*

## § 24-101. Bureau of Prisons.

**Section references.** — This section is referenced in § 24-102.

**Emergency legislation.**

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

**Editor's notes.**

Section 3 of D.C. Law 18-233 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, but no earlier than June 1, 2011.

According to the Office of the Budget Director, as of Feb. 15, 2012, D.C. Law 18-233 had not been funded. D.C. Law 18-233, § 3, was repealed by D.C. Law 19-168, § 7011.

Section 7016 of D.C. Law 19-168 provided that Sections 7001, 7004, 7007, 7009, 7011, and 7015 of the act shall apply as of June 19, 2012.

## § 24-101a. District of Columbia Corrections Information Council.

(a) There is established a District of Columbia Corrections Information Council ("CIC "). The CIC shall be responsible for the inspection of all facilities housing District of Columbia inmates who are under the jurisdiction of either the Bureau of Prisons or the Department of Corrections, and for the monitoring of the conditions and treatment of District of Columbia inmates incarcerated in those facilities.

(b)(1) The CIC shall consist of a Corrections Information Council Governing Board ("Board ") as well as an Executive Director and subordinate personnel.

(2)(A) The Board shall be composed of 3 members, 2 of whom shall be appointed by the Mayor with the advice and consent of the Council, and one of whom shall be appointed by the Council.

(B) Of the members first appointed, the Mayor shall appoint one member for a one-year term. The other mayoral appointee and the Council appointee shall serve 2-year terms. Thereafter, members shall be appointed for terms of 2 years. A Board member may be reappointed. A person appointed to

fill a vacancy on the Board occurring prior to the expiration of a term shall serve for the remainder of the term or until a successor has been appointed.

(C) The Mayor shall designate the chairperson of the Board.

(D) All members shall be residents of the District of Columbia.

(E) All Board members shall serve without compensation.

(3) The Executive Director shall be the head of the office of the CIC, and shall report to the Board. The Executive Director shall have at least 3 years relevant experience in criminal justice to include matters affecting prisoner conditions of confinement. The Mayor shall appoint the Executive Director to serve for a term of 3 years. An Executive Director may be reappointed. The Board may remove the Executive Director from office for cause.

(c) The Board shall meet as necessary to conduct official business. The presence of 2 members shall constitute a quorum necessary for the CIC to take official action. The CIC may act by an affirmative vote of at least 2 members. The duties of the Board shall include:

(1) Reporting to the Director of the Bureau of Prisons and the Director of the Department of Corrections with advice and information regarding matters affecting District of Columbia inmates in the custody of the Bureau of Prisons or the Department of Corrections;

(2) Advising the Executive Director in performing his or her duties;

(3) Reviewing the findings of the Executive Director concerning the conditions of confinement of District of Columbia inmates in both the Bureau of Prisons and the Department of Corrections custody and make recommendations where appropriate;

(4) Transmitting the findings of the CIC as required under subsection (e) of this section.

(d)(1) Conducting comprehensive inspections of District of Columbia corrections facilities housing inmates, including halfway houses, the Correctional Treatment Facility, and the Central Detention Facility pursuant to § 24-211.02(b)(1);

(2) Negotiating with the Director of the Bureau of Prisons to provide access to each facility housing District of Columbia sentenced felons for the purposes of:

(A) Conducting inspections, unannounced, if possible, of all areas accessible to inmates;

(B) Conducting unmonitored interviews of inmates in areas open to inspection; and

(C) Interviewing selected staff at each facility;

(3) Conducting, on an annual basis, comprehensive inspections of at least 3 separate Bureau of Prisons facilities housing District of Columbia sentenced felons;

(4) Reviewing documents related to the conditions of confinement at each facility housing District of Columbia sentenced felons, including inmate files and records, inmate grievances, incident reports, disciplinary reports, use of force reports, medical and psychological records, administrative and policy directives of the facility, and logs, records, and other data maintained by the facility;

(5) Reporting his or her findings related to the duties of this subsection to the Board; and

(6) Producing reports as required under subsection (f) of this section.

(1) The Executive Director shall employ qualified persons or utilize the services of qualified volunteers, as necessary, to perform the work of the CIC. Subject to appropriations, the Executive Director may employ persons on a full-time or part-time basis, or retain the services of contractors for the purpose of inspecting facilities.

(2) The Executive Director shall supervise all employees and volunteers of the CIC, and shall ensure that all rules, regulations, and orders are carried out properly, and that all records of the CIC are maintained properly.

(3) Subject to approval of the Board, the Executive Director shall establish a pool of qualified persons who shall be assigned by the Executive Director to carry out the functions set forth in this section. In selecting a person to be a member of this pool, the Executive Director shall take into consideration each person's education, work experience in the correctional facility area, and general reputation for competence, impartiality, and integrity in the discharge of his responsibilities. No member of the pool shall be a current employee of the Department of Corrections or the Bureau of Prisons. For their services, the members of this pool shall be entitled to such compensation as the Executive Director, with the approval of the Board, shall determine; provided, that the compensation shall be on a per-case, not a per-hour, basis.

(f)(1) Within 60 days of the end of each fiscal year, the CIC shall transmit to the Director of the Bureau of Prisons, the Mayor, the Council, and the Director of the Department of Corrections the following reports:

(A) A report on the conditions of confinement of District of Columbia inmates in the Department of Corrections custody; and

(B) A report on each inspection of a facility housing District of Columbia sentenced felons as required in subsection (d)(3) of this section.

(2) The reports shall have been prepared by the Executive Director and approved by the Board, and shall be made available to the public.

(g) The CIC is authorized to apply for and receive grants to fund its program activities in accordance with the laws and regulations relating to grant management.

(h)(1) The Chief Financial Officer shall provide financial support services and oversight for the CIC using personnel assigned to provide financial support services and oversight for the Department of Corrections.

(2)(A) The Chief Procurement Officer shall provide contracting and procurement support services and oversight for the CIC using personnel assigned to provide contracting and procurement support services and oversight for the Department of Corrections.

(B) The CIC is authorized to contract with qualified private organizations or individuals for services in accordance with Chapter 3A of Title 2 [§ 2-351.01 et seq.].

(3) The CIC is authorized to appoint one employee to the Excepted Service established by § 1-609.01 et seq.

(i) The Mayor shall provide the CIC with adequate office space that is separate and independent from the Department of Corrections.

(Aug. 5, 1997, 111 Stat. 734, Pub. L. 105-33, § 11201, as added Oct. 2, 2010, D.C. Law 18-233, § 2(b), 57 DCR 4514; Sept. 26, 2012, D.C. Law 19-171, § 221, 59 DCR 6190.)

**Effect of amendments.** — The 2012 amendment by D.C. Law 19-171 substituted “Chapter 3 of Title 2” for “Chapter 3A of Title 2” in (h)(2)(B).

**Emergency legislation.** — For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

**Legislative history of Law 19-171.** — Law 19-171, the “Technical Amendments Act of 2012,” was introduced in Council and assigned

Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

**Editor’s notes.**

Section 3 of D.C. Law 18-233 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, but no earlier than June 1, 2011. According to the Office of the Budget Director, as of Feb. 15, 2012, D.C. Law 18-233 had not been funded. D.C. Law 18-233, § 3, was repealed by D.C. Law 19-168, § 7011.

*Subchapter III. Offender Supervision and Parole.*

§ 24-133. Court Services and Offender Supervision Agency.

**Section references.** — This section is referenced in § 1-527.01, § 11-1722, § 22-4001, § 24-131, and § 24-132.

CASE NOTES

**Jurisdiction.**

United State Parole Commission’s revoking parolee’s supervised release and imposing sentence did not usurp judicial functions or violate separation-of-powers; his term of supervised

release had not expired, Commission had jurisdiction over him pursuant to District of Columbia law, and federal regulations permitted revocation and imposition of sentence. *Taylor v. U.S. Parole Com’n*, 2012 WL 1574423 (2012).

CHAPTER 2. PRISONS AND PRISONERS.

*Subchapter II. Department of Corrections*  
Part A  
General

Sec.  
24-211.02. Powers; promulgation of rules.

Sec.  
24-211.02a. Processing and release of inmates from the Central Detention Facility.  
24-211.07. District compliance with federal immigration detainees.

*Subchapter I. Prisons.*

## PART A.

GENERAL.

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**§ 24-201.15. Accountability for safekeeping of prisoners.**

**Section references.** — This section is referenced in § 24-201.13.

## LAW REVIEWS AND JOURNAL COMMENTARIES

Enforcing Corrections-Related Court Orders in the District of Columbia. Jonathan M. Smith, 2 D.C.L.Rev. 237, (1994).

*Subchapter II. Department of Corrections.*

## PART A.

GENERAL.

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**§ 24-211.02. Powers; promulgation of rules.**

(a) Said Department of Corrections under the general direction and supervision of the Mayor of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The Department of Corrections with the approval of the Council of the District of Columbia shall have power to promulgate rules and regulations for the government of such institutions and to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation.

(b) The Department of Corrections shall:

(1) Provide access to the Central Detention Facility, upon request and appointment, to members of the Corrections Information Council, or their staff, agents, or designees, for the purposes of conducting:

(A) Inspections of all areas accessible to inmates; and

(B) Unmonitored interviews of inmates in areas open to inspection under subparagraph (A) of this paragraph;

(2) Provide to the Council on a quarterly basis all internal reports relating to living conditions in the Central Detention Facility, including inmate grievances, the Crystal report, the monthly report on the Priority One environmental problems and the time to repair, the monthly report of the

Environmental Safety Office, the monthly report on temperature control and ventilation, and the monthly report on the jail population that includes the number of people waiting transfer to the federal Bureau of Prisons and the average number of days that inmates waited for transfer;

(3) Initiate and maintain regular afternoon and evening visiting hours at the Central Detention Facility for a minimum of 5 days a week, including Saturdays and Sundays;

(4) Develop and implement a classification system and corresponding housing plan for inmates at the Central Detention Facility; and

(5) Return to an inmate, upon the inmate's release from the Central Detention Facility, any personal identification documents collected from the inmate, including driver's licenses, birth certificates, and Social Security cards.

(6) Repealed.

(7) Repealed.

(8) Repealed.

(June 27, 1946, 60 Stat. 320, ch. 507, § 2; Jan. 30, 2004, D.C. Law 15-62, § 4, 50 DCR 6574; July 23, 2010, D.C. Law 18-190, § 2, 57 DCR 3397; Sept. 26, 2012, D.C. Law 19-171, § 80, 59 DCR 6190; Dec. 22, 2012, D.C. Law 19-195, § 2(a), 59 DCR 10159.)

**Section references.** — This section is referenced in § 24-101, § 24-101a, and § 24-251.01.

**Effect of amendments.**

The 2012 amendment by D.C. Law 19-171 redesignated (b)(7) and (b)(8) as (c) and (d) and made related changes; and substituted “paragraph (6) of subsection (b) of this section” for “paragraph (6) of this subsection” in the introductory language of (c).

The 2012 amendment by D.C. Law 19-195 repealed (b)(6), (7), and (8).

**Emergency legislation.**

For temporary (90 day) amendment of section, see § 2(a) of DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary (90 day) amendment of section, see § 2(b) of DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary repeal of (b)(6), (c), and (d), see § 2(a) of the DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary repeal of (b)(6), (c), and (d), see § 2(a) of the DOC Inmate Processing and Release Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-509, October 26, 2012, 59 DCR 12804).

**Legislative history of Law 19-171.** — Law 19-171, the “Technical Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

**Legislative history of Law 19-195.** — Law 19-195, the “DOC Inmate Processing and Release Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-428. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on August 9, 2012, it was assigned Act No. 19-444 and transmitted to Congress for its review. D.C. Law 19-195 became effective on Dec. 11, 2012.

## LAW REVIEWS AND JOURNAL COMMENTARIES

Life At Lorton: An Examination Of Prisoners' Rights At The District Of Columbia Correc-

tional Facilities, 5 Boston University Public Interest Law Journal 165.

## **§ 24-211.02a. Processing and release of inmates from the Central Detention Facility.**

(a) The Department of Corrections shall process and release inmates from the Central Detention Facility as follows:

(1) Except as provided in paragraphs (2) and (3) of this subsection, the Department of Corrections shall have the obligation to ensure that all inmates are released by 10:00 p.m.; provided, that such obligation does not apply to inmates who are ordered released by the court between 10:00 p.m. and 7:00 a.m. or to inmates who are being released into the custody of another jurisdiction. The Department of Corrections shall have the obligation to abide by subsection (c) of this section for all inmates being released between 10 p.m. and 7 a.m., including those who are ordered released by the court.

(2) For an inmate ordered released pursuant to a court order, the inmate shall be released within 5 hours of transfer from the custody of the United States Marshals Service into the custody of the Department of Corrections, unless the inmate is to continue in confinement pursuant to another charge or warrant; provided, that the Department of Corrections has the obligation to release inmates by 10:00 p.m.

(3) For an inmate who has completed his or her sentence, and for whom there is no other outstanding charge or warrant, the inmate shall be released before noon on his or her scheduled release date.

(b) The Department of Corrections shall establish, in coordination with the courts and the United States Marshals Service, procedures to ensure that inmates who have been ordered released by the court are returned to the Central Detention Facility as promptly as possible.

(c) For all inmates released between 10 p.m. and 7 a.m., the Department of Corrections shall ensure, before release, that:

(1)(A) The inmate has a residence or other housing that the inmate is able to access and the inmate has agreed, in writing, to access the residence or housing at the time of the inmate's release; or

(B) A shelter is able and willing to receive the inmate at the time of the inmate's release and the inmate has agreed, in writing, to access the shelter at the time of the inmate's release;

(2) The inmate is provided with the clothing that the inmate wore upon intake to the Central Detention Facility or, if that clothing is not available, other clothing provided by the Department of Corrections; provided, that the clothing is:

(A) Appropriate for the weather;

(B) Not a jumpsuit; and

(C) Typical of street clothing worn by citizens in public;

(3) Written verification is obtained from the Central Detention Facility's healthcare provider ("provider") that, upon release, the inmate has a 7-day supply of all prescription medications that the inmate is to continue taking upon release from custody and that the inmate has received release counseling, if medically recommended, from the provider within the preceding 7 days;

(4) If the inmate is a sentenced inmate, the inmate has been provided,

within the 7 days before release, release counseling on access to benefits and services available in the District to facilitate reentry;

(5) The inmate has transportation immediately available upon the inmate's release from the Central Detention Facility to transport the inmate to the housing identified in paragraph (1) of this subsection by:

- (A) A member of the Department of Corrections transportation unit;
- (B) A taxi, at the Department of Corrections' expense; or
- (C) A friend or family member,

(6) The inmate has been provided with the option of remaining within a Department of Corrections facility until release at 7 a.m. If an inmate chooses to do so, the Department of Corrections must obtain a written waiver from the inmate stating that the inmate has knowingly, intelligently, and voluntarily decided to remain in a Department of Corrections facility until 7:00 a.m.; and

(7) The warden of the Central Detention Facility has certified, in writing, that the requirements of this subsection have been met.

(d)(1) The Department of Corrections shall maintain an accurate record of the date and time of each inmate's release from the Central Detention Facility that shall be a matter of public record and that may be audited, upon request, by the Inspector General for the District of Columbia or the District of Columbia Auditor.

(2) The Department of Corrections shall provide to the Council, on a quarterly basis, a list of all inmates who have been released in violation of this section. The list shall include the following information for each inmate released:

- (A) The custody status of the inmate before release (e.g., pre-trial detention, sentenced misdemeanor);
- (B) The reason for the inmate's release (e.g., completion of sentence, court order);
- (C) The date and time the Department of Corrections received the release order from the court or other authority; and
- (D) The date and time of the release.

(e)(1) For each inmate released after 10 p.m. on the date of the expiration of his or her sentence or on the date he or she is ordered released by the court, the Department of Corrections shall be fined an initial \$1,000, with an additional fine of \$1,000 for each 24-hour period that the inmate is overdetained.

(2) The Office of the Chief Financial Officer shall transfer funds in accordance with paragraph (1) of this subsection to the Settlements and Judgments fund to support litigation related to the Department of Corrections.

(June 27, 1946, 60 Stat. 320, ch. 507, § 2a, as added Dec. 22, 2012, D.C. Law 19-195, § 2(b), 59 DCR 10159.)

**Effect of amendments.** — The 2012 amendment by D.C. Law 19-195 added this section.

**Emergency legislation.** — For temporary addition of section, see § 2(b) of the DOC Inmate Processing and Release Emergency Amendment Act of 2011 (D.C. Act 19-129, August 1, 2011, 58 DCR 6784).

For temporary addition of section, see § 2(b) of the DOC Inmate Processing and Release

Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary addition of section, see § 2(b) of the DOC Inmate Processing and Release Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-509, October 26, 2012, 59 DCR 12804).

**Legislative history of Law 19-195.** — See note to § 24-211.02.

## § 24-211.06. Charge against United States for care of convicts.

**Emergency legislation.** — For temporary (90 day) addition of section, see § 2 of Immigration Detainer Compliance Emergency

Amendment Act of 2012 (D.C. Act 19-379, June 15, 2012, 59 DCR 7383).

## § 24-211.07. District compliance with federal immigration detainers.

(a) The District of Columbia is authorized to comply with civil detainer requests from United States Immigration and Customs Enforcement (“ICE”) by holding inmates for an additional 24-hour period, excluding weekends and holidays, after they would otherwise be released, but only in accordance with the requirements set forth in subsection (b) of this section.

(b) Upon written request by an ICE agent to detain a District of Columbia inmate for suspected violations of federal civil immigration law, the District shall exercise discretion regarding whether to comply with the request and may comply only if:

(1) There exists a prior written agreement with the federal government by which all costs incurred by the District in complying with the ICE detainer shall be reimbursed; and

(2) The individual sought to be detained:

(A) Is 18 years of age or older; and

(B) Has been convicted of:

(i) A dangerous crime as defined in § 23-1331(3) or a crime of violence as defined in § 23-1331(4), for which he or she is currently in custody;

(ii) A dangerous crime as defined in § 23-1331(3) or a crime of violence as defined in § 23-1331(4) within 10 years of the detainer request, or was released after having served a sentence for such dangerous crime or crime of violence within 5 years of the request, whichever is later; or

(iii) A crime in another jurisdiction which if committed in the District of Columbia would qualify as an offense listed in § 23-1331(3) or (4); provided, that the conviction occurred within 10 years of the detainer request or the individual was released after having served a sentence for such crime within 5 years of the request, whichever is later.

(c) Notwithstanding subsection (b)(2)(B)(ii) and (iii) of this section, a detainer request for an individual who has been convicted of a homicide crime, pursuant to § 22-2101 et seq., or a crime in another jurisdiction which if

committed in the District of Columbia would qualify as a homicide crime, may be honored regardless of when the conviction occurred.

(d)(1) The District shall not provide to any ICE agent an office, booth, or any facility or equipment for a generalized search of or inquiry about inmates or permit an ICE agent to conduct an individualized interview of an inmate without giving the inmate an opportunity to have counsel present.

(2) This subsection shall not be construed to establish a right to counsel that does not otherwise exist in law.

(Act of June 27, 1946, ch. 507, § 7, as added Dec. 22, 2012, D.C. Law 19-194, § 2, 59 DCR 10153.)

**Effect of amendments.** — The 2012 amendment by D.C. Law 19-194 added this section.

**Emergency legislation.** — For temporary addition of section, see § 2 of the Immigration Detainer Compliance Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-475, October 9, 2012, 59 DCR 12098), applicable as of September 13, 2012.

**Legislative history of Law 19-194.** — Law 19-194, the “Immigration Detainer Compliance

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-585. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on August 8, 2012, it was assigned Act No. 19-442 and transmitted to Congress for its review. D.C. Law 19-194 became effective on Dec. 11, 2012.

**Editor’s notes.** — Former § 24-211.07 was omitted from this part.

PART B.

DEPARTMENT OF CORRECTIONS EMPLOYEE MANDATORY DRUG AND ALCOHOL TESTING.

§ 24-211.23. Testing methodology.

**Emergency legislation.**

For temporary amendment of (e) and (f), see § 305 of the Comprehensive Impaired Driving

and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-508, October 26, 2012, 59 DCR 13325).

CHAPTER 3. PROBATION.

§ 24-304. Discharge from or continuance of probation; modification or revocation of order.

**Section references.** — This section is referenced in § 24-241.01.

CASE NOTES

**Jurisdiction.**

Factual inconsistency between police officer’s testimony at trial on charge against probationer of possession of marijuana with intent to distribute (PMID), that marijuana was in a closed container within car, and officer’s testi-

mony at show-cause hearing that resulted in revocation of probation based on the same drug charge, that the marijuana he found had been in plain view in car, did not violate probationer’s due process rights; whether the marijuana was found inside car’s lidded center console or

in the open area, did not factor into trial court's conclusion that probationer's probation should be revoked because he had possessed the marijuana, and there were several other facts that

evidenced probationer's constructive possession of the marijuana found both in the console and the trunk. *Morgan v. United States*, 47 A.3d 532, 2012 D.C. App. LEXIS 141 (2012).

## CHAPTER 4. INDETERMINATE SENTENCES AND PAROLES.

### *Subchapter I. General Provisions.*

## § 24-404. Authorization of parole; custody; discharge.

**Section references.** — This section is referenced in § 5-113.05.

### CASE NOTES

#### **Supervision of parolees.**

United States Parole Commission was well within its authority to initiate revocation proceedings against parolee, notwithstanding parolee's claim that he should have been released from parole prior to his probation revocation

hearing, where parolee was under the Commission's supervision at the time of the alleged violation. *Ferguson v. Wainwright*, 849 F.Supp.2d 1, 2012 U.S. Dist. LEXIS 42184 (2012).

## § 24-406. Hearing after arrest; confinement in non-District institution.

**Section references.** — This section is referenced in § 5-113.05 and § 24-221.03.

### CASE NOTES

#### ANALYSIS

Good conduct credit.  
Retroactive application.

#### **Good conduct credit.**

Writ of mandamus would be issued to require United States Parole Commission to reexamine its decision to rescind parolee's credit for time spent on parole in light of the Equitable Street Time Credit Amendment Act. *Ferguson v.*

*Wainwright*, 849 F.Supp.2d 1, 2012 U.S. Dist. LEXIS 42184 (2012).

#### **Retroactive application.**

Amendment to District of Columbia regulation to allow days spent on parole to be counted toward fulfillment of sentence of incarceration under certain defined circumstances did not apply retroactively to District of Columbia parolee whose parole was revoked before amendment took effect. *Washington v. U.S. Parole Com'n*, 2012 WL 1606344 (2012).

CHAPTER 5. INSANE DEFENDANTS.

§ 24-501. Commitment during trial; restoration to competency; acquittal by reason of insanity; release after confinement; expenses of confinement; inconsistent statutes superseded; escaped persons; insanity defense; motions for relief.

Section references. — This section is referenced in § 2-1602 and § 7-1301.03.

LAW REVIEWS AND JOURNAL COMMENTARIES

The Guilty But Mentally Ill Verdict: An Idea Whose Time Should Not Have Come. Christopher Slobogin, 53 Geo.Wash.L.Rev. 494 (1985).

CHAPTER 5A. EVALUATION AND TREATMENT OF INCOMPETENT DEFENDANTS.

Sec.  
24-531.01. Definitions.

Sec.  
24-531.05. Competence treatment.

§ 24-531.01. Definitions.

For the purposes of this chapter, the term:

(1) “Competence” means that a defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational, as well as a factual, understanding of the proceedings against him or her.

(2) “Court” or “Superior Court” means the Superior Court of the District of Columbia.

(2A) “DDS” means the Department on Disability Services.

(3) “Defendant” means a defendant in a criminal case or a respondent in a transfer proceeding.

(4) “DMH” means the Department of Mental Health.

(5) “Incompetent” means that, as a result of a mental disease or defect, a defendant does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(6) “Inpatient treatment facility” means:

(A) Saint Elizabeths Hospital;

(B) Any other physically secure hospital for the examination or treatment of persons with mental illness; or

(C) Any physically secure or staff-secure facility for the examination, treatment, or habilitation of persons with intellectual disabilities.

(7) Repealed.

(8) “Transfer proceeding” means a proceeding pursuant to § 16-2307 to transfer a respondent who is alleged to be a delinquent in a juvenile case from the Family Court to the Criminal Division of the Superior Court of the District of Columbia to face adult criminal charges.

(9) “Treatment” means the services or supports provided to persons with mental illness or intellectual disabilities, including services or supports that are offered or ordered to restore a person to competence, to assist a person in becoming competent, or to ensure that a person will be competent.

(10) “Treatment provider” means:

(A) The Department of Mental Health;

(B) The DDS;

(C) An inpatient treatment facility as defined in paragraph (6) of this section; or

(D) Any other entity or individual designated by the DMH or DDS to provide evaluation, examination, treatment, or habilitation pursuant to this chapter that:

(i) Is duly licensed or certified under the laws of the District of Columbia to provide services or supports to persons with mental illness or intellectual disabilities, or both; and

(ii) Has entered into an agreement with the District to provide mental health services or mental health supports or to provide services or supports to persons with intellectual disabilities.

(May 24, 2005, D.C. Law 15-358, § 101, 52 DCR 2015; Sept. 26, 2012, D.C. Law 19-169, § 22(a), 59 DCR 5567.)

**Section references.** — This section is referenced in § 16-2307.

**Effect of amendments.** — The 2012 amendment by D.C. Law 19-169 added (2A); substituted “intellectual disabilities” for “mental retardation” wherever it appears in (6)(C), (9), and (10); repealed (7), which formerly read: “MRDDA’ means the Mental Retardation and Developmental Disabilities Administration”; substituted “DDS” for “The Mental Retardation and Developmental Disabilities Administration” in (10)(B); and substituted “DDS” for “MRDDA” in the introductory language of (10)(D).

**Legislative history of Law 19-169.** — Law 19-169, the “People First Respectful Language Modernization Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

**Editor’s notes.** — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

## § 24-531.05. Competence treatment.

(a)(1) If the court makes a finding pursuant to § 24-531.04(c)(1)(B)(i), the court may order the defendant to participate in treatment for restoration of competence on an inpatient or outpatient basis. The court shall order treatment in the least restrictive setting consistent with the goal of restoration of competence.

(2) The court may order inpatient treatment if it finds that:

(A) Placement in an inpatient treatment facility setting is necessary in order to provide appropriate treatment; or

(B) The defendant is unlikely to comply with an order for outpatient treatment.

(3) If the court orders treatment on an outpatient basis, it shall direct DMH or DDS, or both, to designate an appropriate treatment provider. If the court orders treatment on an inpatient basis it shall commit the defendant to Saint Elizabeths Hospital or direct DMH or DDS, or both, to designate an appropriate inpatient treatment facility.

(b) Except as provided in subsections (c) and (d) of this section, the court may order the defendant to undergo competence treatment on an inpatient basis for one or more periods of time, not to exceed 180 days in the aggregate.

(c) Except as provided in subsection (d) of this section, the court may order a defendant charged with a crime of violence, as defined in § 23-1331(4), to undergo competence treatment on an inpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds:

(1) There is a substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal; and

(2) Inpatient treatment is the least restrictive setting based on the criteria set forth in subsection (a) of this section.

(d)(1) Excluding extended treatment pending the completion of civil commitment proceedings ordered pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2), inpatient treatment may last no longer than the maximum possible sentence that the defendant could have received if convicted of the pending charges.

(2) If, during inpatient treatment ordered to restore a defendant to competence, the maximum possible sentence the defendant could have received if convicted of the pending charges expires, the court shall either release the defendant or, where appropriate, enter an order for extended treatment pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2).

(3) The defendant shall be awarded credit against any term of imprisonment imposed after being found competent for any time during which he was committed to an inpatient treatment facility for either a competence examination or competence treatment.

(e)(1) The court may order the defendant to undergo competence treatment on an outpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds there is substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal.

(2) The Department of Mental Health or the treatment provider shall submit a written report to the court at any time it determines that the criteria for inpatient treatment set forth in subsection (a) of this section are met.

(May 24, 2005, D.C. Law 15-358, § 105, 52 DCR 2015; Sept. 26, 2012, D.C. Law 19-169, § 22(b), 59 DCR 5567.)

**Section references.** — This section is referenced in § 24-531.02, § 24-531.06, § 24-531.08, and § 24-531.09.

**Effect of amendments.** — The 2012

amendment by D.C. Law 19-169 substituted “DDS” for “MRDDA” twice in (a)(3).

**Legislative history of Law 19-169.** — See note to § 24-531.01.

**Editor's notes.** — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.









